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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 OLOTH INSYXIENGMAY,

10 Petitioner,

11 v.

12 RICHARD MORGAN,

13 Respondent.

Case No. C00-5500RJB

ORDER GRANTING PETITIONER A
CERTIFICATE OF APPEALABILITY

14 This matter comes before the court on the petitioner's Notice of Appeal (Dkt. 97) and
15 Petitioner's Motion for a Certificate of Appealability (Dkt. 98). The court has considered the
16 briefing of the parties and the remainder of the record herein.

17 LEGAL STANDARD

18 The district court should grant an application for a Certificate of Appealability only if the
19 petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. §
20 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner
21 must make a showing that reasonable jurists could debate whether, or agree that, the petition should
22 have been resolved in a different manner or that the issues presented were adequate to deserve
23 encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (*quoting*
24 *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the court denies a claim on procedural
25 grounds, the petitioner must show that jurists of reason would find it debatable whether the petition

1 states a valid claim of the denial of a constitutional right and that jurists of reason would find it
2 debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 120
3 S.Ct. at 1604.

4 REQUEST FOR CERTIFICATE OF APPEALABILITY

5 On January 25, 2006, the court issued an order denying petitioner's petition for writ of
6 habeas corpus. Dkt. 96.

7 Petitioner filed a notice of appeal and has requested a Certificate of Appealability on the
8 following issues:

- 9 1. Whether Mr. Insyxiengmay is entitled to habeas relief on the ground that he was prejudiced
10 by his unconstitutional exclusion from the in camera hearing during the state court
proceedings.
- 11 2. Whether Mr. Insyxiengmay is entitled to habeas relief on the basis that he was denied his
12 Sixth Amendment right to confrontation when the trial court allowed the admission of
incriminating statements made by the non-testifying co-defendant.
- 13 3. Whether Mr. Insyxiengmay is entitled to habeas relief on the ground that he was denied his
14 Sixth Amendment right to confront the witnesses against him when the trial court refused to
allow complete cross-examination of the testifying co-defendant regarding his plea
agreement.
- 15 4. Whether Mr. Insyxiengmay is entitled to habeas relief on the ground that he was denied his
16 constitutional right to due process of law when the trial court failed to instruct the jury on
lesser included offenses which were warranted by the evidence.

17 Dkt. 98, at 1-2.

18 Respondent has filed a response opposing the request for a Certificate of Appealability,
19 arguing that the claims do not meet the standard required to obtain a Certificate of Appealability.
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Dkt. 100.

21 DISCUSSION

22 In denying the petition for writ of habeas corpus, the court rejected the claims on the
23 merits pursuant to the standard set forth in 28 U.S.C. § 2254(d). Although the court did not
24 believe that petitioner's claims warranted habeas relief, reasonable jurists could debate whether,
25 or agree that, the petition should have been resolved in a different manner; and the issues presented
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1 are adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. at
2 1603-04. The court should grant petitioner's request for a Certificate of Appealability on
3 the issues identified above.

4 Accordingly, it is hereby **ORDERED** that Petitioner's Motion for a Certificate of
5 Appealability (Dkt. 98) is **GRANTED** on the four issues identified above.

6 The Clerk is directed to send a copy of this Order to counsel for petitioner and to
7 counsel for respondent.

8 DATED this 13th day of March, 2006.

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11 ROBERT J. BRYAN
12 United States District Judge
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